

## **Legal Jargon and Process 101**

**Executive Summary.** Being in management, middle or upper, will likely land you close to a courtroom. At least you will be exposed to the legal process. Here are some of the basics from a non-lawyer.

**What sort of events would expose me to legal jargon?** In construction there are many ways you can be exposed to the legal process:

- Construction claim – if you are a contractor and you make a change order request that just never gets resolved, you may be off to dispute resolution. This is mediation, arbitration, or court.
- Injury – if there is a significant injury on the job, it will likely involve a personal injury lawyer.
- Expert witness work – being an expert witness may land you in a courtroom, or similar.
- Utility strike – hitting a utility (via excavation) and going to fight the charge received from said Utility may lead you to a courtroom.
- Insurance work – working on either side of an insurance claim can easily elevate to a legal matter.
- Employee complaint – if one of your employees or coworkers has a complaint, you may hear from an attorney.

Each of these matters will likely have a lawyer involved. That means you will be exposed to the legal system.

**What's the process?** As far as the formal legal process, it generally goes like this:



Here's the non-lawyer definitions:

- **Complaint** – This is the kickoff document detailing one party suing another. This is a multi-page base document wherein the person or party who has the complaint details the complaint. The complaint is the lawsuit. For example, if there is a case where you are the contractor who was delayed by the Owner, this document over several pages would provide in good summary

detail why you are due money. And then at the end it would say how much money you want.

- **Motion for Summary Judgement (MSJ)** – An MSJ is a document written by your lawyer which basically says “This case is stupid, it’s blatantly obvious that it should be thrown out and here’s why. Now Mr./Ms. Judge or mediator or arbitrator, throw it out.”
- **Deposition** – This is when a lawyer sits one-on-one with the person being deposed and asks questions of him or her. The entire event is audio-recorded and there is a court reporter sitting next to the person being deposed with a special typewriter machine in his/her lap taking down every word you say.
- **Declaration** – If your lawyer wants you to be on the record for certain opinions, but doesn’t want to orally depose you, your lawyer can have your statements listed on a document and you can swear literally “sign off” on them. This is a formal way of introducing information onto the record. There is not oral testimony (like in a deposition above).
- **Hearing** – Like on television, this is a room with opposing attorneys and a judge.
- **Decision** – This is self-explanatory.

This has been the sequence of a basic case, some more terms are below.

**Spit some more jargon at me.** In addition to what you read above, you may see these terms:

- **Plaintiff** – this is the party who is bringing the suit. They are doing the suing. This can also be known as the **Claimant**.
- **Defendant** – this is the party opposite the Plaintiff. However, they can counterclaim. This can also be known as the **Respondent**.
- **Complaint** – see above.
- **Summary Judgment** – see above.
- **Deposition** – see above.
- **Declaration** – see above.
- **John and Jane Does** – when an attorney doesn’t know who all of the parties are, he or she can list John Doe or Jane Doe or Does. This allows him or her to name parties later in the suit.
- **Contemporaneous** – this is a behavior you should breed into your people. In the context of documenting on the job, it means write what happens now, now. If an event happened today, write it down today. Do not write down a year from now, what is happening today. Contemporaneous documentation



is recording observations in real time. It holds up much better in a dispute because the information doesn't look fixed to meet the narrative.

- **Plaintiff v. Defendant** – in a case of Party X versus Party Y, the plaintiff is listed first. Just like in a baseball game, they always list the visitor first, the home team second (like Yankees v. Orioles is being played in Baltimore).

**My story.** There's more language in the legal world. Lots of Latin. Every time I'm involved in a case, I look up the Latin terms and they make sense; they're certainly not everyday terms.

The types of cases I listed up on the first page are all ones for which I've been involved. Cases involving:

- Construction claim – differing site condition.
- Injury – construction equipment striking a worker.
- Expert witness work – standard of care as it relates to contracting.
- Utility strike – striking a gas valve with a paving machine (valve wasn't located).
- Insurance work – shingles allegedly blown off in a wind storm.
- Employee complaint – worker suffering penis deformation due to exposure to groundwater (just making sure you're still reading, and yes, this is actually true).



The terms I shared above are ones you will run into in your career. With whatever type of case you may encounter. I'm luckier than many – notice divorce didn't make the list of personal experiences.

Work safe! (and marry safer!)